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JEANNE HICKS, Clerk
Memberlain
Deputy

Defendant.)

ROXANNE E. TARN, CR
Certified Court Reporter
Certificate No. 50808

INDEXPROCEEDINGSPAGETESTIMONYPAGE**JOHN HOANG**

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MAY 27, 2010
10:55 A.M.

DAUBERT HEARING

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER AND MR. JEFF
PAUPORE.

FOR THE DEFENDANT: MR. JOHN SEARS, MR. LARRY
HAMMOND AND MS. ANNE CHAPMAN.

MR. BUTNER: Thank you, Judge. I would call
Mr. John Hoang to the stand.

THE CLERK: You do solemnly swear or affirm
under the penalty of perjury that the testimony you are about
to give will be the truth, the whole truth, and nothing but
the truth, so help you God?

THE WITNESS: I will.

THE COURT: Mr. Butner.

MR. BUTNER: Thank you, Judge.

JOHN HOANG,
called as a witness, having been duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. BUTNER:

Q. Please state your name for the record, sir.

A. My name is John, J-O-H-N, last name is Hoang
H-O-A-N-G.

Q. And what is your occupation, Mr. Hoang?

1 A. I am a footwear tire track examiner for the
2 Arizona Department of Public Safety assigned to the Phoenix
3 crime lab.

4 Q. And how long have you been a footwear tire track
5 examiner for the Arizona Department of Public Safety?

6 A. For over seven years.

7 Q. Do you have any special education to prepare
8 yourself for your occupation as a footwear tire track
9 examiner?

10 A. Yes. I have a Bachelor of Science degree in
11 forensic science from California State University at
12 Sacramento.

13 Q. When did you get that degree in forensic science
14 from Cal State at Sacramento?

15 A. 1996.

16 Q. Then after graduating from Cal State, where did
17 you go?

18 A. I worked at the Sacramento coroner's office and
19 then I worked six months at a private laboratory.

20 Q. And when did you become employed by the Arizona
21 Department of Public Safety?

22 A. 1997.

23 Q. And would you describe for us -- well, first of
24 all, what did you do when you began your employment at
25 Arizona Department of Public Safety?

1 A. I was a drug chemist.

2 Q. And how long were you a drug chemist?

3 A. Before D.P.S. or with D.P.S.?

4 Q. No, with D.P.S.

5 A. I was a drug chemist up until 2005.

6 Q. And then in 2005, is that when you shifted over to
7 footwear, tire track examining?

8 A. No. I was doing dual duties. More than just
9 controlled substance, I also performed hair, fibers,
10 ignitable liquids, general unknowns, general trace.

11 Q. Okay. And did you have any special education once
12 you had joined the Department of Public Safety lab in the
13 footwear and tire track examining area?

14 A. As far as training for footwear and tire tracks,
15 sir?

16 Q. Yes, sir.

17 A. I received 1000 hours of training on drug training
18 for D.P.S. I attended specialized footwear and tire track
19 courses.

20 Q. Would you describe for us the training that you
21 received from the Arizona Department of Public Safety, the
22 thousand hours, so to speak?

23 A. It consists of literature review, processing
24 footwear, tires, footwear evidence, tire track evidence, and
25 practical tests. And before I can complete my training, I

1 had to take a competency test, which I passed.

2 Q. And in addition to this training in terms of tire
3 track and footwear evidence, what other type of training did
4 you receive during that time frame? You indicated that there
5 were other specialized classes, too, that were not put on by
6 D.P.S.

7 A. Right. There was one done by a footwear examiner,
8 retired FBI footwear examiner, William Bodziak. He taught a
9 specialized footwear class, 40 hours of that. I also
10 attended another of his, but that is only relating to tire
11 tracks. I have attended seminars given by the IAI.

12 Q. So you have gone to a special class from William
13 Bodziak in the general sense for examining these things,
14 footwear and tire tracks, and then you went to a specialized
15 class from him concerning tire tracks only?

16 A. One was footwear only, and the one just tire
17 tracks. So 40 hours of footwear, 32 hours of tire track
18 training, and then I attended a seminar hosted by the IAI.

19 Q. A seminar hosted by the IAI. This is the
20 International Association of --

21 A. For Identification.

22 Q. -- For Identification.

23 And then how long have you actually been
24 performing duties with D.P.S. as a tire track examiner?

25 A. I include that with footwear, so over seven years.

1 Q. And this competency exam, when did you take the
2 competency exam to begin doing these examinations?

3 A. In 2001.

4 Q. Have you testified as an expert witness in any
5 courts, either in the state of Arizona or other
6 jurisdictions?

7 A. Well, just for footwear and tire track, yes, I
8 have. I testified over 15 times. This is in Pima County,
9 Maricopa County, Coconino County, and I am not quite sure if
10 I have testified here at Yavapai County.

11 Q. Okay. And so were you qualified in the Arizona
12 Superior Court as an expert witness on tire track examining?

13 A. Yes.

14 MR. BUTNER: Let me show you what's been
15 marked as Exhibit 2227.

16 May I, Judge?

17 THE COURT: You may.

18 MR. BUTNER: Thank you.

19 Q. Do you recognize that, sir?

20 A. Yes.

21 Q. What is that?

22 A. I call it a statement of qualifications, a CV.

23 Q. Your curriculum vitae; is that correct?

24 A. Yes, sir.

25 Q. Is that the one that you provided to Mr. Sears at

1 your interview?

2 A. I believe so, yes.

3 Q. It hasn't changed since the time of your
4 interview?

5 A. No.

6 Q. Would you describe what is set forth on the CV,
7 basically the general categories and information, so to
8 speak?

9 A. My current duties, my academic training, my
10 professional experience.

11 Q. All of that is set forth on your CV?

12 A. Yeah, and then my specialized training.

13 MR. BUTNER: I move for the admission of
14 Exhibit 2227.

15 MR. SEARS: No objection.

16 THE COURT: 2227 is admitted for this hearing.

17 MR. BUTNER: Thank you.

18 Q. Now, Mr. Hoang, you were asked to do some
19 examination of items in this particular case; is that
20 correct, sir?

21 A. Yes, that is correct.

22 Q. Basically, they were of a tire track nature; is
23 that right?

24 A. Yes.

25 Q. What were you asked to examine in this particular

1 case?

2 A. I was asked to compare a known bicycle tire to
3 tire tracks at that scene.

4 Q. And first of all, where did you get the known
5 bicycle tire or tires for examination?

6 A. Well, I checked the evidence out from our property
7 evidence unit.

8 Q. Did you find out where it came from?

9 A. Yavapai County.

10 Q. It was submitted to the D.P.S. lab by the Yavapai
11 County Sheriff's office?

12 A. Yes, sir.

13 Q. And what was the examination that you were asked
14 to conduct?

15 A. Tire examination comparison.

16 Q. And what were you to compare these tires to?

17 A. Tire tracks left at the scene.

18 Q. And what were you provided in the way of
19 information for comparison from the scene?

20 A. I was provided two compact disks that had
21 photographs.

22 Q. Two compact disks of photographs?

23 A. Yes, sir.

24 Q. And did you go through those two disks of
25 photographs?

1 A. Yes, I did.

2 Q. Did you pick out a number of photographs that were
3 suitable for your purposes?

4 A. Yes, sir. I picked out four.

5 Q. Did you enhance those photographs in order to
6 perform your comparisons?

7 A. I enlarged the photograph, yes.

8 Q. You enlarged them?

9 A. Yes.

10 Q. Did you do anything else to enhance them?

11 A. No, I did not.

12 Q. And in performing this analysis, would you
13 describe for us the theory or technique that you employed in
14 analyzing these photographs -- or analyzing these tires and
15 comparing them with the photographs?

16 A. Yes. The technique that I used consists of four
17 phases, testing process. The first phase is the examination
18 or analysis. The second phase would be the comparison. The
19 third would be evaluation. And the fourth is the technical
20 review or sometimes called the verification.

21 Q. Okay. So describe for us, if you would, please,
22 the examination for analysis phase of your scientific
23 evaluation, please. What did you do?

24 A. First, in the evaluation, you have to look at
25 class characteristics. These are manufacturer features that

1 are shared by two other objects, and the class characteristic
2 that I am looking for is tread pattern --

3 MR. BUTNER: (Phone ringing) Sorry, Your
4 Honor.

5 THE WITNESS: So tread pattern and physical
6 size.

7 BY MR. BUTNER:

8 Q. Pardon?

9 A. Tread pattern and physical size.

10 Q. Okay.

11 A. In this case, in the examination process, I
12 noticed that the tread pattern looked similar. I could not
13 exclude based on the tread pattern. Therefore, I went ahead
14 and made test print and test impression of the known tires.

15 Q. Okay. The tread pattern looked similar. What
16 about the physical size?

17 A. Because of the photograph and the clarity of the
18 images, I was not able to use that to determine physical
19 size.

20 Q. So you relied upon the tread pattern?

21 A. Yes, sir.

22 Q. How many tires were you provided to analyze?

23 A. Two.

24 Q. And did you do this with both tires?

25 A. Yes, I did.

1 Q. Is this a method that is commonly used in your
2 field of expertise?

3 A. Yes.

4 Q. Then you went on to the second step of your
5 analysis; is that correct?

6 A. Yes.

7 Q. What is that called?

8 A. This is a comparison, which is basically the
9 side-by-side comparison of your known and your questioned.
10 So your known tire and your questioned tire tracks.

11 Q. And would you describe for us how you do that?

12 A. Basically, put in your exemplars, your test
13 impression. You are basically looking at that tread pattern
14 and comparing it to that tread pattern observed in the
15 photograph.

16 Q. All right. And is there a particular method that
17 you employ when you are doing this kind of comparison from
18 the tire tread -- from the tire to the photograph? How do
19 you do that?

20 A. This is, again, it is a side-by-side comparison.
21 You are looking at tread pattern. You are looking at the
22 features that are exhibited in your known, in this case
23 tires, and you are trying to compare to tread patterns that
24 are observed in your photograph.

25 Q. Okay. Were there any specific features of the

1 tires that you were asked to examine and compare in this case
2 that you took note of?

3 A. Yes. Well, there is two tires showing two
4 different tread patterns. One tire had more like a broad
5 arrow tread design. The other one -- the other tire had a
6 bar tread design.

7 Q. Okay.

8 A. So those type of designs were also observed in the
9 photograph.

10 Q. All right. And is this a method that is
11 frequently employed in your scientific discipline?

12 A. Yes.

13 Q. Are there other methods that are used?

14 A. Other method meaning?

15 Q. Other methods besides this type of method?

16 A. This is considered comparative evidence. It is
17 used in hair, fibers, firearms, tool marks.

18 Q. This is basically the way that this is done?

19 A. Yes.

20 Q. There are not other ways to do this?

21 A. Not that I know of.

22 Q. And you compared the broad arrow tread pattern
23 with some of the images that you had; is that correct?

24 A. Yes, I did.

25 Q. What did you find in regard to the broad -- what

1 is the next step?

2 A. That is the comparison step. The next step is
3 evaluation of what I have.

4 Q. In regard to the tire with the broad arrow tread,
5 what was your evaluation?

6 A. It shared similar tread pattern.

7 Q. When you say "shared similar tread pattern," what
8 do you mean by that?

9 A. That means the features of that pattern, whatever
10 the shape, the size, the spacing between the tread are
11 similar to each other.

12 Q. Okay. Did you note any differences?

13 A. No, I did not.

14 Q. In regard to the other tire, I think you indicated
15 it had a type of bar pattern?

16 A. Bar block, yes.

17 Q. Bar block, okay. Tell us what you did with that
18 particular tire.

19 A. Same thing as I did with the first tire. Same
20 conclusion.

21 Q. What was that?

22 A. It shared similar tread pattern.

23 Q. And there is a final step, if I understand it, in
24 your analysis. What is that?

25 A. It is called technical review, where a second

1 qualified examiner reviewed my work to verify that I have
2 followed procedure and that my result is correct.

3 Q. And how is that accomplished, that step?

4 A. It is sent to another examiner who goes through my
5 report and my notes.

6 Q. Another examiner in your lab?

7 A. Actually -- yeah, he is part of D.P.S., yes.

8 Q. And what was the result in this particular case in
9 terms of the technical review or the second examination, so
10 to speak?

11 A. He signed off on my work.

12 Q. And so what is that conclusion?

13 A. That he agrees with my findings.

14 Q. Now this particular methodology that you performed
15 in this case, is this a theory or technique that is subject
16 to publication?

17 A. Yes.

18 Q. What kind of publication? Where is it published?

19 A. It is published in numerous books, articles in the
20 *Journal of Forensic Science* and *Journal of Forensic*
21 *Identification*.

22 Q. Have you read publications about the way in which
23 you should use the methodology?

24 A. It is part of my training, yes.

25 Q. These publications, are they subject to peer

1 review?

2 A. Yes, they are.

3 Q. Let me show you what is already admitted into
4 evidence as Exhibit 2228.

5 Would you take a look at this.

6 A. (Whereupon, the witness reviews a document.)

7 Yes.

8 Q. Would you go through it, and you will see that
9 there is a publication also attached to the back; right?

10 A. Yes.

11 Q. Are you familiar with what is contained in Exhibit
12 2228?

13 A. Yes.

14 Q. What is it?

15 A. This is a list of journals and published books and
16 seminars given by numerous footwear and tire track examiners.

17 Q. And have you read all of those journals?

18 A. Some.

19 Q. Okay. How many?

20 A. I can't say.

21 Q. Do you know which ones you have read?

22 A. I could go down the list, and I could --

23 Q. Give us an example of some of the ones that you
24 have read concerning your field of expertise.

25 A. I have read -- well, like the name listed here is

1 like William Bodziak. He is the one who taught my footwear
2 and tire track classes.

3 Q. Is that concerning tire track examination?

4 A. Footwear and tire track, yes. One week of tire
5 track. Ernest Hamm. He is another -- I attended one of his
6 workshops at IAI.

7 Q. That is International Association of --

8 A. For Identification.

9 Q. For Identification. Okay.

10 A. There is books here that is listed that I used as
11 part of my training.

12 Q. Tell us some of those books.

13 A. Lawrence Nause, N-A-U-S-E.

14 Q. What book is it?

15 A. It is called *Tire Track Impression Evidence*.

16 Q. And any other books that you recognize there?

17 A. There is Peter McDonald, *Tire Imprint Evidence*.

18 William Bodziak has written two books, one on footwear, the
19 other one on tire tracks.

20 Q. So do you read these publications on a regular
21 basis to stay current in your field?

22 A. Yes.

23 Q. And these books, are these reference materials
24 that you use?

25 A. Yes, and I use them.

1 Q. How frequently do you use these things?

2 A. If there is a question -- if there is a case that
3 I have a question on, or there is a technique that I want to
4 refresh on, I go back to these books.

5 Q. So you use those on a regular basis, I take it?

6 A. Yes.

7 Q. Let's talk about the rate of error concerning this
8 examination of tire tracks. Is there a rate of error
9 concerning your examination of tire tracks?

10 A. Well, there is no known error rate if you apply
11 the techniques of the four testing process.

12 Q. Would you explain why that is?

13 A. Because our test here is you have a second
14 examiner verifying your comparison.

15 Q. And do you do a quantitative analysis that is
16 subject to a numeric designation in any way?

17 A. No.

18 Q. What type of analysis do you do?

19 A. It is a comparative analysis.

20 Q. Okay. Is there a scientific community in which
21 you function as an expert in this area?

22 A. Yes.

23 Q. Would you describe that scientific community for
24 us, please.

25 A. Yes. It is in fibers, hairs, tool marks,

1 fingerprints, questioned documents. Those are the science --
2 footwear and tire tracks, too.

3 Q. This is all encompassed under this International
4 Association of Identification?

5 A. Well, the IAI is more specific to fingerprinting
6 and footwear and tire tracks.

7 Q. And does the IAI provide guidelines or regulatory
8 information in any fashion for your profession?

9 A. Yes. They actually published a training
10 guideline, and they also give you a form where you can get
11 information for footwear and tire track.

12 Q. And are you certified in any way by the IAI?

13 A. I am not, and I am not required to.

14 Q. Are you certified by the Arizona Department of
15 Public Safety Crime Lab?

16 A. There is no certification for my job.

17 Q. Is your lab certified?

18 A. My lab is accredited by the Arizona Society of
19 Crime Laboratory Accreditation Four.

20 Q. And on a regular basis do you undergo competency
21 exams?

22 A. The competency exam is your first exam before you
23 actually work cases. After that you have got to have a
24 proficiency test, and yes, I have been doing that annually.

25 Q. How is that proficiency test administered?

1 A. Pretty much a CTS sample is provided to the lab to
2 the QA manager. The QA manager gives me the test. I would
3 apply the test like I would case work. I would issue a
4 report and my notes, and I give this back to my QA manager.

5 Q. Okay. You have used a bunch of acronyms there.
6 First of all, you said something about a CTS sample. Would
7 you describe what that is for us, please.

8 A. CTS is Collaborative Testing Service, Inc.

9 Q. Are they the ones that provide the test that is
10 administered to you on an annual bases?

11 A. Yes.

12 Q. What is the QA?

13 A. QA is quality assurance manager.

14 Q. That is someone at your lab?

15 A. Yes.

16 Q. What does the quality assurance manager do at your
17 lab?

18 A. Make sure you follow procedures and protocols.

19 Q. Do you have specialized procedures and protocol
20 that you must follow to perform analysis of tires and tire
21 tracks?

22 A. Yes.

23 Q. Would you describe basically what those are in a
24 general sense.

25 A. Basically, it is how you go about documenting your

1 impressions and then going about getting your -- performing
2 your comparison.

3 Q. Are those updated periodically?

4 A. Yes.

5 Q. In doing the testing in this particular case, did
6 you follow the established protocols for your lab?

7 A. Yes, I did.

8 Q. Did you document your testing in accordance with
9 those protocols?

10 A. Yes.

11 Q. In regard to this kind of testing of tire tracks,
12 is this testing generally accepted in the scientific
13 community in which you function?

14 A. It has been accepted, and it has been accepted for
15 many, many years.

16 Q. When you say many years, approximately how many
17 are you talking about?

18 A. Well, it has been cited as far back as the 1700's.
19 As far as cases go, I could use as far back as 1930.

20 Q. Is this pertaining to tire track evidence going
21 back to the 1930's?

22 A. Well, track evidence meaning shoe impression. As
23 far as tire track, back to 1930's.

24 Q. In this particular case, you analyzed bicycle
25 tires; is that correct?

1 A. That's correct.

2 Q. Is that sort of unusual for you to analyze?

3 A. This is my first bicycle case. Unusual, I can't
4 say. But it is my first.

5 Q. Is there anything that was particularly
6 distinctive about having to perform an analysis on bicycle
7 tires?

8 A. No. It is a comparative science, so I use the
9 same technique as I would to any compared discipline.

10 Q. In regard to your analysis of the bicycle tires
11 that were provided to you in this case, what is your opinion
12 in that regard?

13 A. That the tires share similar tread pattern to the
14 tire track observed in the photograph. However, due to the
15 limitations of the scale and clarity, a more conclusive
16 association cannot be made.

17 Q. When you say shared similar tread patterns to
18 those depicted in the photographs, is this by way of a
19 category, so to speak?

20 A. Yes.

21 Q. Would you explain what you mean by that.

22 A. There is like five scales of your conclusions.
23 The first one is being a positive identification. The next
24 one is inconclusive, but more like probably could have made.
25 The second one is inconclusive. The third is probably not

1 made. And the fourth is elimination.

2 Q. On that five scale of conclusions, so to speak,
3 where do you come down in regard to these tires as compared
4 with the tire tracks depicted in the photographs?

5 A. It is inconclusive, but cannot be excluded.

6 Q. So is that Position No. 2, so to speak?

7 A. Three.

8 Q. Three. So inconclusive, but could not be
9 excluded?

10 A. That's correct.

11 Q. And can you tell us anything further about your
12 opinions in regard to these particular tires and the
13 photographs of tire tread impressions that you compared them
14 to?

15 A. No, I can't.

16 MR. BUTNER: I don't have any further
17 questions of this witness at this time, Judge.

18 THE COURT: Mr. Sears.

19 MR. SEARS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SEARS:

22 Q. Welcome to Prescott.

23 A. I am here.

24 Q. Glad to see you up here. Thank you for coming.

25 When Mr. Robertson and I interviewed you

1 in the office in Phoenix, you told us that in addition to
2 this being your first bicycle tire case, you had talked to
3 your colleagues and none of the people that you worked with
4 could remember having a bicycle tire case to work on either.
5 Is that still true?

6 A. That's correct.

7 Q. You also told us that unlike shoeprints and
8 automobile tires, you are not aware of any data base
9 maintained that would assist in identifying manufacturer and
10 model for these kinds of bicycle tire impressions. Is that
11 right?

12 A. That's correct.

13 Q. So in this case, let me see if I understand what
14 you did. You were sent a CD from the Yavapai County
15 Sheriff's office of images. Actually, you got two CD's; is
16 that right?

17 A. That's correct.

18 Q. One CD had 57 images of impressions, both
19 questioned impressions and some rolled impressions from
20 subject tires; right?

21 A. Yes.

22 Q. The other CD had 140 images of all kinds of
23 things, crime scene photos and things that didn't seem
24 connected to what you thought you were being asked to do;
25 correct?

1 A. That's correct.

2 Q. What you were asked to do, as you understood it,
3 was to render an opinion as to whether the impressions in the
4 dirt were made by these subject tires. And you also got the
5 tires sent to the lab; correct?

6 A. Yes.

7 Q. You rolled the tires out. You inked the tires and
8 rolled them out and produced some tread impressions on paper;
9 correct?

10 A. And on biofoam. Impressions, yes.

11 Q. Can you tell the judge what biofoam is?

12 A. It is just a material that you can get an
13 impression of your footwear or your tire.

14 Q. That hadn't been done previously. You hadn't been
15 given any biofoam impressions from law enforcement, had you?

16 A. On this case?

17 Q. Yes.

18 A. That's correct. No.

19 Q. You didn't?

20 A. I didn't, yes.

21 Q. On the 57 images that you received on the CD, I
22 understand that you only thought four of them had any
23 forensic value for your purposes; correct?

24 A. Four had quality that I could use in my
25 examination, yes.

1 Q. Meaning the other 53 were unusable?

2 A. I did not use them.

3 Q. So they were unusable; correct?

4 A. I did not use them.

5 Q. Let's talk about the collection practices and the
6 way in which that relates to the work you do.

7 The Department of Public Safety has
8 produced pretty detailed guidelines for the collection and
9 preservation of impression evidence; correct?

10 A. That's correct.

11 Q. And you are familiar with those; correct?

12 A. Yes.

13 Q. And in your mind, law enforcement would be well
14 served to follow and observe the recommendations of D.P.S. to
15 make your job easier; correct?

16 A. Not only to make my job easier, but to ensure that
17 you properly document and preserve the evidence.

18 Q. Because it is going to be used in a criminal case
19 where somebody's life and liberty are on the line. In
20 addition to making your job easier, it is about preserving
21 evidence in a criminal case; right?

22 A. Sure. You could say that.

23 Q. And there are best practices that are described in
24 these D.P.S. guidelines and protocols; correct?

25 A. That's correct.

1 Q. With respect to tire impression evidence, one of
2 the things that is described in considerable detail in the
3 protocols is the proper way, the best way to forensically
4 photograph them for further examination; correct?

5 A. That's correct.

6 Q. And in general, the techniques involved using
7 photographic equipment that results in the photographs taken
8 from directly above, the questioned impressions, as opposed
9 to some oblique angle; correct?

10 A. That's correct.

11 Q. Why?

12 A. You will want it to scale, because when you
13 process the photograph to enlarge it to life size,
14 one-to-one, you want that scale to be as parallel as
15 possible.

16 Q. And another strong suggestion is that
17 consideration be given to the lighting and shading on the
18 images and the possible use of additional alternative or
19 outside light sources, if appropriate; correct?

20 A. Well, you want to use your camera flash at a
21 certain angle to better capture the detail of your
22 impression. Sometimes, if it is too bright outside, it is
23 best to actually block that sunlight.

24 Q. And replace the light with artificial light?

25 A. That is your camera flash.

1 Q. And also there is discussion about the use of
2 scales, and we are talking about essentially rulers that
3 would be laid near the questioned impressions; correct?

4 A. That's correct.

5 Q. And there are pretty detailed descriptions in
6 these D.P.S. suggestions for how to do that, which involve
7 among others things, making sure that the scale is on the
8 same plane as the bottom of the impression as Mr. Gilkerson
9 told us?

10 A. That's correct, yes.

11 Q. That is important to you; right?

12 A. Yes.

13 Q. Why?

14 A. Same thing. When you are re-scaling anything, you
15 want to have the optimal possible way to enhance something.
16 So you have to have everything on these criteria to do that.

17 Q. When we were talking about tire tracks, whether
18 they are automobile or truck or in this particular case
19 bicycle tracks, there are some additional considerations that
20 are discussed in these D.P.S. advisory guidelines about how
21 to preserve forensically the whole track, the length of the
22 track for future examination.

23 Are you familiar with those suggestions?

24 A. Yes.

25 Q. And that the purpose of that, generally, is so

1 that forensic examiners like you, defense lawyers like me,
2 and ultimately juries can understand not only what the
3 impressions themselves represent, but where these tracks are
4 in relation to other objects, where they begin, where they
5 end, where they cross over each other, and similar
6 characteristics of the entire track; right?

7 A. That is important for the case, yes.

8 Q. There are a number of suggestions about how to use
9 simple techniques like numbered or lettered placards that can
10 be put on various parts of a questioned track; right?

11 A. Yes.

12 Q. You remember when you were talking to
13 Mr. Robertson and I, you gave some examples about trying to
14 document where things were in the room we were sitting in,
15 chairs and tables; right?

16 A. Yes.

17 Q. You said, for example, if somebody just talked
18 about a chair and gave a description of that chair but was
19 not specific about which chair, where in the room, someone
20 trying to look at that work would have a difficult time
21 making that connection, what chair are we talking about,
22 where is it?

23 A. Right.

24 Q. Let's talk about this case. First with regard to
25 the photography in this case.

1 What was it about the photography in this
2 case that you said in your report, which was dated September
3 16, 2008, that there was limited clarity and proper scale in
4 the images. What was it specifically about the photography
5 that caused you to have that difficulty?

6 A. It appears that the camera was not parallel to the
7 impression.

8 Q. Anything else?

9 A. The oblique lighting. It doesn't seem that there
10 was any oblique lighting utilized in this situation.

11 Q. Did that cause shading that made it difficult to
12 see the images?

13 A. The oblique lighting will bring out -- these are
14 impressions, so impression gives you depth. By giving you
15 oblique lighting, you create a shadow in the impression that
16 allows you to see better detail of your impression.

17 Q. What about the use of the scale in the
18 photographs, the four photographs out of 57 that you felt
19 were suitable?

20 A. Well, the scales appear to be on the surface.

21 Q. And that is a problem?

22 A. Yes.

23 Q. It is a problem in the way you just told us;
24 correct?

25 A. It is not recommended as far as the guideline

1 goes. That's correct.

2 Q. And that creates an actual problem. Apart from
3 whether it is following the guidelines, it creates a
4 particular problem for you; correct?

5 A. Like I said, in class you are looking at tread
6 pattern and physical size. If the scales were proper, I can
7 enlarge that one-to-one and determine if the orientation of
8 the tread is similar to the known tires. In this case, since
9 I am unable to do that, all I have now is just tread.

10 Q. Put in layman's terms, because of the deficiencies
11 in the photography, you were unable to measure in any way the
12 actual questioned impression, so that the measurements could
13 be used in trying to make a more close comparison or analysis
14 of the known tires to the questioned impressions; right?

15 A. Yes.

16 Q. Now, you said in your bench notes from this work a
17 little bit more. At Bates 3245, Counsel, you say
18 conclusion -- this is a handwritten bench note, Page 3 of 31
19 of your bench notes. Do you have those?

20 A. Yes, I do.

21 Q. You say: Conclusion: Similar tire tread patterns
22 exist between the tracks depicted in images, and you cite the
23 images being the four, and the front and rear bicycle tires,
24 and you give a number to those. Then you say: Therefore,
25 the tires could have made the tire tracks. The limited

1 clarity in the images preclude a more detailed examination.
2 That is a bit more of your opinion.

3 That bench note language doesn't get
4 completely transferred over to your written report, your
5 September 16 report; correct?

6 A. Correct.

7 Q. Now, when we talked about this at the D.P.S. lab
8 in this case, you gave us some more information about what
9 you were thinking here and what you meant. And you said
10 that, basically, that your conclusions in this case that the
11 known tires and the questioned impressions shared similar
12 tread characteristics simply means that you can't exclude the
13 subject tires as having made the impression in the dirt.
14 That was your bottom-line conclusion; right?

15 A. That's correct.

16 Q. Because of the problems with the photography, you
17 couldn't make any further association beyond saying they
18 shared similar tread characteristics; right?

19 A. That they probably made it, or it is a positive
20 identification. That's correct.

21 Q. You are not here to say and you won't come to
22 trial and tell the jury that you positively identified the
23 subject tires as having made the questioned impressions. You
24 are never going to say that; right?

25 A. No. I am not going to say that.

1 Q. Now, let's talk a little bit more about other
2 methods for preserving this evidence. We talked about
3 photography and the way in which you think it ought to be
4 done.

5 And you told us that casting of
6 impressions using materials like dental stone is commonly
7 done and another way to preserve the latent examination
8 impression evidence; correct?

9 A. That's correct.

10 Q. And that in your experience, you had seen castings
11 done from impressions in sand; correct?

12 A. Yes.

13 Q. And that you didn't think that there was anything,
14 from what you could see in the photographs about the soil
15 conditions around these tire impressions that should have or
16 could have prevented them from being cast?

17 A. That's correct.

18 Q. And casting would have been another way for you to
19 actually measure the impressions because they would have been
20 one-to-one. By the definition of a cast, it is going to
21 produce a one-to-one representation of the impression;
22 correct?

23 A. That's correct.

24 Q. Wasn't done?

25 A. That's correct.

1 Q. And you don't know why?

2 A. No. I do not know why.

3 Q. It is talked about in D.P.S. advisories, though,
4 has a method to accurately and permanently preserve this
5 evidence; correct?

6 A. It is a recommendation, yes.

7 Q. Now, with regard to the efforts made to try and
8 identify the actual location of this track in the 57
9 photographs total, or the four, did you see anything that
10 even approximated what you thought should have been done to
11 try and document the length of the impressions or the
12 location of the impressions?

13 A. I didn't see anything like that.

14 Q. And with respect to the location of the four
15 images that you did wind up utilizing, can you tell us here
16 today where -- where in the world those were taken?

17 A. I assume it is submitted by Yavapai County, so it
18 has got to be somewhere in the county.

19 Q. That is about as close as you can get?

20 A. That is as close as I can get.

21 Q. No. 2, along this supposed track that goes for
22 some distance, from some point to another point, can you tell
23 us where along that track the selected images that you looked
24 at were located?

25 A. No, I cannot.

1 Q. On the other hand, it is possible using
2 photographs, tape measures, video cameras, evidence placards
3 to actually identify the beginning and the end of a
4 questioned tire track; correct?

5 A. The start and the end of that track, yes.

6 Q. And you didn't see anything that indicated that
7 had been done in this case; correct?

8 A. That's correct.

9 Q. And you didn't see anything as simple as taking an
10 evidence placard and putting it down next to a section of the
11 impressions, saying here is No. 4, taking a picture, so that
12 that evidence placard shows up in the picture. You have one
13 or more shots taken directly above, and a location shot
14 saying, here's a shot of where No. 4 is so you can see that
15 it is over there or over here or over there. That was never
16 done; right?

17 A. There was no placard in the photograph of the tire
18 tracks.

19 Q. That would have been the best practice; right?

20 A. That is recommended, yes.

21 Q. In the particularly narrow world of bicycle tire
22 impression evidence, I understand that you applied the same
23 four-step methodology that you do in tire tracks, for
24 example. Is there a quantifiable or objective standard by
25 which conclusions are reached? Saying, for example, in

1 fingerprints, we are all familiar with points of reference.
2 That if you have a known fingerprint, a rolled fingerprint,
3 for example, and a questioned fingerprint, there is some
4 dispute about how many it is, but there is some idea that if
5 you have five or seven or ten points of reference from the
6 questioned to the known, then you can make certain
7 assumptions from that.

8 Is there anything similar to that in
9 bicycle tire or even tire track impressions that says you
10 have got to have one or you have got to have three or you
11 have got to have five? There is nothing like that, is there?

12 A. No, not in footwear or tire tracks.

13 Q. So when you talk about -- you used the term
14 "comparative analysis." Another way to describe that would
15 be a subjective view. That you are trained to look at
16 something and compare it to something else; right?

17 A. Yes.

18 Q. Okay. So in the absence of objective standards
19 saying you must find a certain number of points of
20 similarity, if you don't have that, then it really is just
21 your training and your eye that this looks a lot like this.
22 I can see 1, 2, 3, 4, 5, 6 points of similarity; correct?

23 A. You have to go from the class characteristic
24 first. You have got to look at the class, which again, is
25 your physical size and your tread pattern. And you have got

1 to narrow down to wear characteristics and individual
2 characteristics. There has been research in the comparative
3 community and in the forensic science community where they
4 studied about individual characteristics.

5 Q. You have never seen such a scholarly report on
6 bicycle tire impressions; have you?

7 A. Not that I know of.

8 Q. That exhibit that Mr. Butner was showing you, the
9 list of articles, not a single one of them deals with bicycle
10 tire impressions; does it?

11 A. There is articles or there is chapters, maybe a
12 little portion or paragraph on motorcycle tires and bicycle
13 tires.

14 Q. Have you ever seen a scholarly article devoted to
15 entirely to the science, if there is one, to bicycle tire
16 impressions?

17 A. Again, they are included in your published books.

18 Q. The CTS proficiency exams that you have taken, do
19 you remember a single one of those questions dealing with
20 bicycle tires?

21 A. No.

22 Q. Your competency exam when were you hired on, was
23 there a single question there about bicycle tires?

24 A. No.

25 Q. There is a difference in bicycle tires impressions

1 and automobile tire impressions, differences in -- maybe not
2 in way we approach it, but in the actual impression; correct?

3 A. Yes.

4 Q. In your case, due primarily to the lack of clarity
5 and appropriateness of the photographs, you couldn't get down
6 to steps three and four. You couldn't get down into wear
7 patterns or individual characteristic defects or blemishes in
8 the tires, because you just couldn't see the images that
9 well; correct?

10 A. Either it is not there, or I can't see it. That's
11 correct.

12 Q. You did observe some wear on the sidewalls of the
13 known tires; correct?

14 A. Yes.

15 Q. And could you tell from the images that you saw
16 whether any portion of the sidewall made the questioned
17 impression?

18 A. I cannot determine that.

19 Q. You did some footwear work in this case, though,
20 didn't you?

21 A. Yes.

22 Q. Remember we talked about that?

23 A. Yes.

24 Q. She is taking down what you are saying. She is
25 not seeing you nod your head. Thank you.

1 What you did, apparently, was in
2 September of 2008, you were connecting with Detective Doug
3 Brown of the Yavapai County Sheriff's office. Do you
4 remember that?

5 A. Yes.

6 Q. You produced a SICAR --

7 MR. BUTNER: Judge, I am going to object to
8 relevance at this point. He is not being requested to offer
9 any opinions by the State concerning footwear in this case.

10 THE COURT: Mr. Sears.

11 MR. SEARS: Your Honor, he did some footwear
12 work. And the interesting thing about this is, that he
13 accessed the SICAR data base and produced, and I will have
14 them marked, some images from the SICAR data base. This is
15 interesting in a couple of levels and important to this
16 decision, because it shows that you can save, simply by
17 printing images from the SICAR data base. You recall that
18 Mr. Gilkerson said earlier --

19 THE COURT: You don't need to go that
20 direction. The objection, I gather, is that --

21 MR. BUTNER: Relevance.

22 THE COURT: -- this witness is not going to be
23 offered with regard to that.

24 MR. BUTNER: Not at all.

25 THE COURT: It is a relevance objection, but

1 it is relevance because we are still in the same hearing with
2 regard to Mr. Gilkerson. So you may proceed.

3 MR. SEARS: Exactly. Thank you, Your Honor.

4 We have lots of copies here, so I am
5 going to offer up mine here, if I could have a minute. I
6 would have thought they would be marked by the State. For
7 reference, Counsel, this is Bates 1442, 43, 44 and 45.

8 Q. While she is marking that, Mr. Hoang, I assume
9 that in your seven years as a footwear examiner, you are
10 familiar with and utilize the data base that Mr. Gilkerson
11 from the FBI has told us about today?

12 A. Yes, but we have not always had that data base.

13 Q. But, apparently, you did in September of 2008;
14 right?

15 A. That's correct.

16 Q. Let me show you what I have had marked as Exhibit
17 2236 for identification. And tell me if you recognize those
18 four pages, please.

19 A. Yes, I do.

20 Q. Tell me what they are, please.

21 A. One is the fax sheet to Detective Doug Brown. The
22 other ones are two sheets of shoes, and then the fourth sheet
23 is basically a request form to submit it to the FBI.

24 Q. It actually has Mr. Gilkerson's name on that last
25 page; doesn't it?

1 A. Yes.

2 Q. Did you know Mr. Gilkerson before today?

3 A. No, I didn't -- well, we met and talked, but not
4 for long.

5 MR. SEARS: Your Honor, I would move in 2236
6 for this hearing.

7 MR. BUTNER: Again, same objection.
8 Relevance, Judge. If I could have this witness on voir dire?

9 THE COURT: You may, because otherwise I had
10 some questions I was wondering about.

11 VOIR DIRE EXAMINATION

12 BY MR. BUTNER:

13 Q. First of all, Mr. Hoang, did you do any analysis
14 in the way of footprint analysis on this case?

15 A. I did not issue a report, no.

16 Q. Did you do an analysis?

17 A. Analysis?

18 Q. Yes.

19 A. I was asked to look at questioned shoeprints.

20 Q. When you were asked to do that, what was your
21 response to -- I think it was Detective Brown that asked you;
22 is that right?

23 A. That's correct.

24 Q. What was your response to him?

25 A. That there was nothing on the data base that I

1 used. I could not give him a particular brand of shoe that
2 shared the same tread pattern as the questioned shoeprint.

3 Q. What did you tell him about the photographs that
4 you were asked to use for analysis?

5 A. I said send them to the FBI.

6 Q. What did you say about the quality of those
7 photographs in terms of your ability to do analysis?

8 A. I didn't say anything about the quality.

9 Q. Didn't you indicate to him that the photographs
10 were of insufficient quality for you to perform any analysis?

11 A. No. He just asked me if I could, using my data
12 base, determine the make or brand of the shoe that could have
13 made the questioned shoe impression.

14 Q. And did you indicate to him that you could do
15 that?

16 A. I told him that my data base -- that the data base
17 I use, I could not find anything, the brand or the make of
18 the shoe, but I came up with two that are close. If you take
19 a look, you could still eliminate these two brands of shoe to
20 his shoe impression.

21 Q. So you told him that you had a couple of examples,
22 but that these were not the right type?

23 A. Yeah. They are just showing that I did perform
24 the work, but I did not find a make or brand that exhibits
25 similar tread pattern to the questioned shoe impression.

1 MR. BUTNER: Let me show you what is marked as
2 Exhibit 2236. May I approach, Judge?

3 THE COURT: You may.

4 MR. SEARS: This was supposed to be voir dire
5 on an objection.

6 THE COURT: Go ahead.

7 MR. BUTNER: It is. Thank you.

8 Looking at this photograph right here on
9 Bates No. 1443, Counsel.

10 Q. That particular shoe has some specific
11 characteristics; right?

12 A. Certain specific tread design, yes.

13 Q. Were those specific tread design characteristics
14 present in the photographs that were presented to you by
15 Detective Brown?

16 A. No.

17 Q. So you gave him an example of a shoe that wasn't
18 one that compared to the photos?

19 A. Wasn't one or close.

20 Q. Wasn't one and wasn't close?

21 A. I mean close, shares close tread patterns, but it
22 is not -- you could exclude it based on other tread features.

23 Q. This particular pattern has something written
24 right down the center of it. Something like U.S. Brass;
25 right?

1 A. Correct.

2 Q. You are saying that that is excluded from what was
3 submitted to you by Detective Brown?

4 A. You can exclude it, yes.

5 Q. The next model, I think it is designated on Bates
6 1444, a Van Jump or a Van Leap; right?

7 A. Same conclusion, yeah.

8 Q. That it is excluded?

9 A. You can exclude it, yes.

10 Q. You told him that; right? "Here's some patterns
11 that are excluded"?

12 A. Yeah. That is why I refer him to the FBI, because
13 I know they have a data base.

14 MR. BUTNER: Judge, again, the relevance. He
15 has indicated when he provided the analysis, so to speak, he
16 indicated at that point in time, these are things that are
17 excluded.

18 THE COURT: Well, with regard -- again, I
19 don't have an offer of this at this time, so proceed with
20 your examination, Mr. Sears.

21 MR. SEARS: Thank you, Your Honor.

22 I think I had moved this exhibit for
23 purposes of this hearing, and I think it has some similar use
24 to the Court in terms of this hearing. And I will make an
25 offer of proof where I am going with this, which is, that

1 Mr. Hoang had access to one of the two data bases which
2 Mr. Gilkerson did. He input some data, which I am going to
3 ask him about, some characteristics, and up pops the shoes.
4 There are a couple of interesting things about it. One
5 shows --

6 THE COURT: With regard to your offer, I
7 haven't had sufficient foundation to believe it is relevant.
8 So why don't you ask some more questions about that.

9 So, sustain the objection at this point.

10 CROSS-EXAMINATION RESUMED

11 MR. SEARS: Okay. Let's go back and talk
12 about this shoeprint search.

13 Q. Can you tell me, as you sit here today, which
14 images from the CD, O-D-1 or O-D-2, you looked at at the
15 request of Detective Brown?

16 A. The images were submitted through an e-mail.

17 Q. Were you able to locate that e-mail?

18 A. No, I was not.

19 Q. I think you were looking for it, and we never did.

20 A. I did have the photographs that I did forward to
21 the prosecutor.

22 Q. And it was a shoeprint from the same case, is what
23 you were told; right?

24 A. You know, as I recall, I can't say if it was from
25 this case or not.

1 Q. You heard Mr. Gilkerson here describe the
2 methodology for doing a data base search; correct?

3 A. Yes.

4 Q. That is the way you do it; correct?

5 A. Our data base, again, assists the investigator
6 with their case.

7 Q. The Arizona Department of Public Safety doesn't
8 have direct access to the FBI shoeprint data base that
9 Mr. Gilkerson used; correct?

10 A. That's correct.

11 Q. But both of you, apparently, have access to the
12 SICAR, the one by Freeman, the commercially created one.
13 Both D.P.S. and the FBI are using the same data base;
14 correct?

15 A. Right, but we have -- no longer subscribe to a
16 quarterly subscription.

17 Q. Do you know how long it has been since D.P.S. did
18 that?

19 A. For three years.

20 Q. Back to 2007?

21 A. About.

22 Q. But you can still access the data base for data
23 that was inputted prior to 2007?

24 A. Prior, and I could also enter known shoeprints to
25 the data base.

1 Q. From cases?

2 A. From cases.

3 Q. Any other source?

4 A. I could go to like a sporting good store, shoe
5 company or shoe store and enter those, too.

6 Q. Look at manufacturer's Websites?

7 A. Yeah, but I prefer to get the actual test prints.

8 Q. Did you save any part of the search, including the
9 queries that you did for Detective Brown of the SICAR data
10 base in this case?

11 A. Well, I printed out the photographs. I did a
12 search. I sent them to -- again, look close but they are not
13 it, and another sheet where he could contact the FBI for
14 further assistance.

15 Q. Right. A form to fill out?

16 A. Just a contact sheet.

17 Q. That has Mr. Gilkerson's contact information,
18 among others?

19 A. Yes.

20 Q. That is because of the limitations on what you
21 have available at D.P.S. to do shoeprint data base searches;
22 correct?

23 A. If I was able to get a brand of shoe that shares
24 similar tread pattern, then I would have issued a report to
25 the detective.

1 Q. Do you know how many different geometric shapes
2 you were able to locate -- let's back up. You had one
3 impression. Is that all you were e-mailed, just one image?

4 A. I am not sure.

5 Q. Do you want to take a second and look and see if
6 you have a copy.

7 A. Sure.

8 (Whereupon, the witness reviews a
9 document.)

10 Yes, I found it.

11 Q. How many images?

12 A. Four.

13 Q. Are they the same? These are now shoeprint
14 impressions; correct?

15 A. Shoe impressions, that's correct.

16 Q. Do they suffer from similar deficiencies in
17 clarity and scale that make comparison work difficult for
18 these footwear impressions?

19 A. Looking at these, yes.

20 Q. And Mr. Butner asked you several times, and you
21 said several times, that you communicated to Detective Brown
22 that you were unable to make a positive identification or
23 find a shoe in the data base. Is that information written
24 down anywhere, that communication with Detective Brown?

25 A. I faxed him two copies, and I told him that, you

1 know, that I could not further assist him. Therefore, here
2 is the information where you can contact the FBI.

3 Q. Do you remember how many different geometric
4 shapes you were able to see in those four images that you
5 have in front of you that you would have inputted into the
6 SICAR data base and run a search?

7 A. Well, I would input, you know, one or two, and
8 then if I don't get anything, I would input others, more, and
9 see what I get, and if I don't get anything, and then I stop.

10 Q. You can't tell us as you sit here today without
11 re-doing that work, you don't have anything written down that
12 says I see five things or I see two things. You just can't
13 tell?

14 A. That's correct.

15 Q. Other than printing out the two images that you
16 have in front of you, is any part of that search saved on a
17 hard drive or some other electronic storage form that would
18 show what your input was and what the total results might
19 have been from SICAR?

20 A. No.

21 Q. Do you remember how many different results you got
22 from SICAR?

23 A. I can't remember.

24 Q. Does SICAR list its results alphabetically?

25 A. I can't say it is. I know that I tend to use the

1 image, whatever is closest. I actually look at the image of
2 the tread, and I just go down the image, so you get a list of
3 possible brand of shoes. But along with that you get
4 photographs of the tread pattern. So I just mainly use the
5 tread pattern.

6 Q. Okay. So if I understand what you are saying,
7 your ultimate opinion was that SICAR data base didn't contain
8 images that closely corresponded with those images in front
9 of you there. Is that your bottom-line opinion?

10 A. The data that I used that day, yes.

11 Q. Why did you send Doug Brown the images that you
12 did? What was it about those images that caused you to
13 bother to print them out and fax them to him?

14 A. It shows him that I made an attempt to search our
15 data base and these are close, and that is what I was trying
16 to let Detective Brown know.

17 Q. From the photographs can you absolutely exclude
18 the shoes that popped up on SICAR that you printed out?

19 A. Yes, because if I cannot exclude, again, I would
20 have a known shoe, and I issue a report to Detective Brown
21 and not refer him to the FBI.

22 Q. So that is what you did in this case?

23 A. That's correct.

24 MR. SEARS: I would renew my motion, Your
25 Honor.

1 THE COURT: To?

2 MR. SEARS: To admit the four pages, the fax.

3 MR. BUTNER: Same objection. Absolute
4 exclusion is what he said.

5 THE COURT: Let him finish his offer.

6 MR. BUTNER: Sorry, I thought he was.

7 THE COURT: Go ahead.

8 MR. SEARS: I think, Your Honor, for purposes
9 of this hearing, this is not evidence for the jury for
10 purposes of understanding how these data bases are done. I
11 think it is informative for the Court to understand, the
12 record to show, that a different examiner using perhaps
13 different images, but the same methodology and the same data
14 base, came to a particular conclusion.

15 And I think you will see as the day
16 progresses that this has a great deal to do with the lack of
17 general science behind the data base searches and the utter
18 subjectivity with no restraints and no guidelines of this
19 subjective and comparative analysis.

20 I think it is important for the record to
21 show what this examiner did, and put it down side-by-side
22 with the work that Mr. Gilkerson did. That is the limited
23 purpose we are trying to offer.

24 THE COURT: In the way of illustration, much
25 like the other documents in terms of professional articles

1 was admitted for similar purposes.

2 MR. SEARS: Precisely, even when I thought it
3 lacked foundation.

4 THE COURT: Did you want to be heard with
5 regard to illustrative use of this exhibit?

6 MR. BUTNER: Mr. Gilkerson's opinion was based
7 upon a different data base, even than was used by this
8 witness, Judge. This witness indicated that what he found
9 was absolutely excluded.

10 THE COURT: I recognize that.

11 For purposes of illustration, I am going
12 the overrule the objection and admit the Exhibit 2236 for
13 purposes of illustration.

14 MR. SEARS: Thank you.

15 I have no further questions of Mr. Hoang,
16 Your Honor. Thank you.

17 THE COURT: Mr. Butner?

18 MR. BUTNER: I have no further questions.
19 Thank you.

20 THE COURT: May he be released to go back to
21 his offices?

22 MR. BUTNER: Yes, he may, Your Honor.

23 THE COURT: You are released to go back to
24 your office.

25 THE WITNESS: Thank you.

1 THE COURT: Are you prepared to go forward at
2 1:30?

3 MR. SEARS: Yes, Your Honor.

4 THE COURT: Mr. Butner, 1:30?

5 MR. BUTNER: Thank you, Judge.

6 THE COURT: We will recess.

7 (Whereupon, this portion of this proceeding was concluded.)

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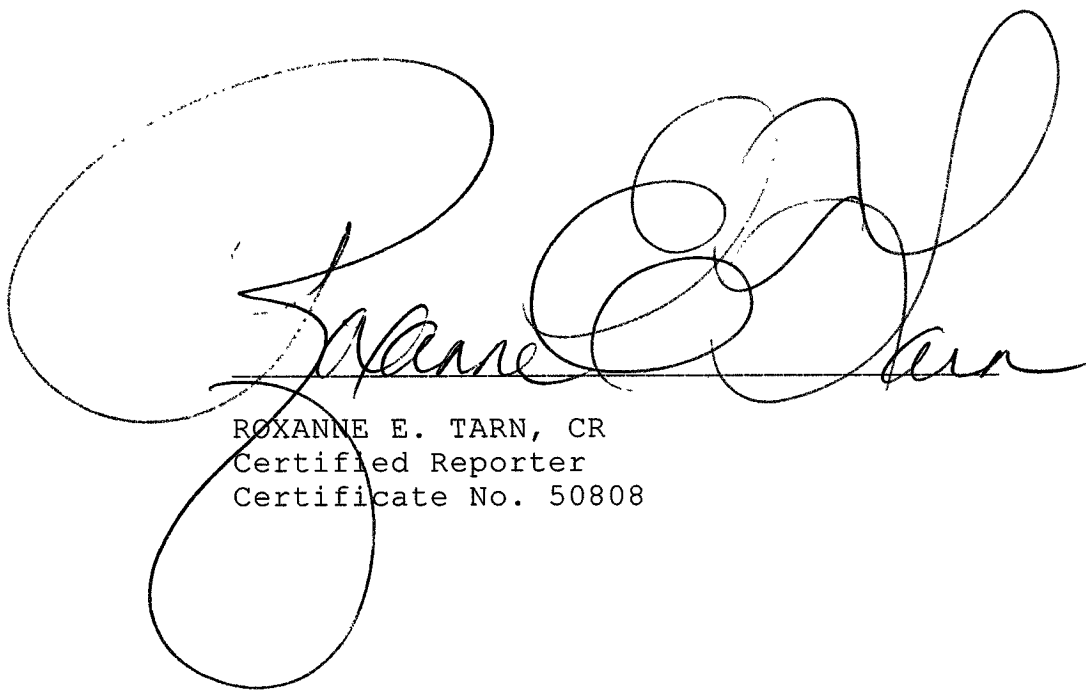
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C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter
in the State of Arizona, do hereby certify that the foregoing
pages 1 - 54 constitute a full, true, and accurate transcript
of the proceedings had in the foregoing matter, all done to
the best of my skill and ability.

SIGNED and dated this 13th day of September,
2010.



ROXANNE E. TARN, CR
Certified Reporter
Certificate No. 50808